

**Remarks**

Claims 1-3 and 7-18 are pending with entry of this Amendment and stand rejected.

Claims 4-6 were cancelled without prejudice in another paper. Claims 1-3 and 7-18 are pending with entry of this Amendment and stand rejected.

Independent Claims 1, 17 and 18 have been amended with the entry of this Amendment.

**The Recent Prosecution**

On March 2, 2010, Applicant's representative conducted an interview with the Examiner regarding the improper rejection of Claims 1-3, 7 and 17-18 as being obvious in view of Agostino and Nelson. It was agreed upon during this interview that Agostino could not properly be cited as a reference and/or combined with Nelson, and it was agreed upon by the Examiner that the rejection premised upon Agostino and Nelson would be withdrawn. See Applicant's response filed on March 18, 2010 commemorating the substance of the interview.

To Applicant's surprise, however, the Office mailed an Advisory Action on April 27, 2010, which ignored both the content of the interview and the entirety of Applicant's response. Indeed, the Advisory Action merely summarized the improper rejection in the Final Office Action which was acknowledged by the Examiner as improper:

As explained in the Final office [sic] Action dated 11/24/09, "Agostino does not specifically teach of "test driving", but utilizes "mobile diagnostic units" as in the present invention (specialized test units), the examiner would like to introduce Nelson to teach where each of the steps are performed without test driving (columns 1, lines 33-43 and 60-67; column 2, lines 1-8; column 3, lines 45-51; column 4, lines 17-19 and 22-24; where the uplink information from the of the [sic] wireless devices are used in place of "drive testing" to collect real-time data for analyses). Nelson also teaches of gathering downlink."

See Advisory Action at ¶11. Applicant respectfully requests of the Office an explanation of the discrepancies between what was represented to Applicant's representatives during the interview of March 2, 2010 and what was expressed and/or ignored in the instant Advisory Action.

### **The Instant Amendment**

Applicant has amended the independent claims (Claims 1, 17 and 18) in the subject application for clarification purposes and such an amendment was made solely to further prosecution in this matter. Incorporating Applicant's response of March 18, 2010, the references of record fail to teach the claimed subject matter, alone or in combination, and Applicant respectfully solicits the withdrawal of the rejection and allowance of the claimed subject matter.

### **The Rejection**

#### **1. Agostino**

As the Office is aware, the primary reference, Agostino uses a mobile diagnostic unit (MDU), that is, a laptop computer, combined with a cellular phone (MU) to collect forward link (downlink) data. Agostino uses a mobile telephone exchange (MTE) or base station to collect reverse link (uplink) data. Agostino then utilizes data gathered by both the MDU and MTE to optimize an RF system.

Agostino specifically states that "it is extremely important for engineers to analyze both the forward link data collected by the MDU and the reverse link data saved...by the MTE." See 1:50-54. "Only by studying details of this information, including communication messages and parametric data with aligned time stamps attached thereto from the perspectives of both the MDU and MTE, are the engineers able to tell what has happened during the earlier communication that has caused unsatisfactory performance of the network...". See 1:59-62. Thus, Agostino specifically requires drive testing for the collection of downlink data. This teaching cannot be ignored by the Office.

This express teaching is confirmed in Agostino in at least two instances. First, at 8:36-44, Agostino distinguishes itself from conventional systems requiring two engineers, one drive testing and a second engineer at the MTE by concluding that the invention eliminates the need for both engineers. Indeed, Figure 8 provides a map view indicating the route the drive testing engineer has actually traveled using an MDU in Agostino's invention. *See* Fig. 8 and 8:64-9:2. Thus, Agostino eliminated the need for the one engineer at the MTE but still requires the drive testing engineer.

2. The Final Action and the Advisory Action, however, completely ignore the express teachings of Agostino and Nelson

Nelson's teachings removes Agostino as a combinable reference; however, this was ignored by the Office in the Final Action and its reasons for ignoring Applicant's response and apparently the content of the previous interview.

For example, Nelson expressly criticizes the teachings of an Agostino system (e.g., a CPU or laptop in combination with a cellular phone) by stating that "this is an expensive and inefficient system because it requires a PC separate from the wireless device and allows for only one call to be analyzed at a time." *See* 4:52-55. This express teaching away from the Office's proposed combination must be considered by the Office and cannot be (but was) ignored. *See* MPEP § 2141.02(VI) and § 2145(X)(D)(1)-(2). Hence, the agreement by the Examiner during the interview to withdraw the current rejection premised upon Agostino and commemorated by Applicant's March 18, 2010 response.

Even if this were not the case, each of the independent claims (Claim 1, 17 and 18) require that **each of the steps of the claimed subject matter are performed without drive testing. This element, alone, would act to remove Agostino as a properly cited reference.**

3. The Final Action and Advisory Action also ignore other claimed elements.

The Office does not have any references of record that teach each and every claim element of Claims 1, 17 and 18. For example, there simply is no disclosure or teaching in either reference of at least:

“forming data pairs by identifying the gathered geolocation data and the gathered signal strength data corresponding to the same mobile units and by selecting the geolocation data and the measured signal strength data received within sufficiently close temporal proximity to a reference time stamp to identify data from the same mobile unit; and

generating a set of data pairs correlating measured signal strength values to specific geographic locations throughout said wireless system,”

*See* Claim 1. Independent Claims 17 and 18 provide similar elements.

Rather (and this was discussed at length during the interview), Nelson discloses gathering uplink call data parameters (*see* 4:13-21) and determining a location of a wireless device using geolocation information detected by a base station or using data measured by the wireless device (*see* 3:28-52 and 3:64-67, respectively). This location of the wireless device is then matched with the uplink call data parameters to monitor performance of a cell. *See* 4:66-5:1. Nelson is completely silent with regard to the claim elements recited above.

During the interview, the Office admitted that none of the cited references taught this element and it is inconceivable that the Office is still ignoring these elements. To the extent the Examiner relies upon the same rejection, Applicant expressly requests a personal interview with the Examiner and her supervisory regarding the rejection of the claimed subject matter.

Reconsideration and withdrawal of the rejection of Claims 1, 17 and 18 are respectfully solicited. As Claim 1 is in condition for allowance and Claims 2-3 and 7-16 depend therefrom, Applicant submits Claims 2-3 and 7-16 are allowable by virtue of their dependency alone without addressing the additional patentable subject matter therein.

Reconsideration and withdrawal of the rejection of Claims 2-3 and 7-16 are respectfully requested.

**Conclusion**

Applicant respectfully submits that the claims are in condition for allowance and a notice to this effect is respectfully requested.

The Office is requested and hereby authorized to charge any required extension-of-time fees against Deposit Account Number 04-1679 to Duane Morris LLP.

If any point remains that is deemed best resolved through a telephonic conversation, the Office is hereby requested to contact the undersigned directly.

Respectfully submitted,

/mcc/

Mark C. Comtois      Reg. No. 46,285

DUANE MORRIS LLP  
505 9<sup>th</sup> Street N.W., Suite 1000  
Washington, D.C. 20004  
Telephone: (202) 776-7800  
Telecopier: (202) 776-7801

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